UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RODNEY S. DAUGHTREY

Appeal 2007-3516
Application 10/697,823
Technology Center 2100

Decided: November 29, 2007

Before ANITA PELLMAN GROSS, JEAN R. HOMERE, and JOHN A. JEFFERY, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from the Examiner's rejection of claims 1-49. We have jurisdiction under 35 U.S.C. § 6(b), and we heard the appeal on November 8, 2007. We affirm-in-part.

STATEMENT OF THE CASE

Appellant invented a computerized travel planning system. Specifically, the system includes a graphical user interface with a tabular region that displays summarized travel options. Cells of the tabular region act as controls and, when selected, display selected travel options in accordance with the particular control.

The invention also compartmentalizes travel options into bins according to a set of criteria. As a result, users can select individual bins to focus on a subset of travel options of interest.[1] Claims 1 and 10 are illustrative:

1. A graphical user interface for a travel planning system comprises:

a tabular region having a plurality of cells, the tabular region comprising cells arranged in plural columns and plural rows with the cells displaying a summary of a criterion of a set of travel options, and with the cells being controls that when selected, provide a subset of the travel options that correspond to the respective criterion or criteria of the selected cell; and

a second region that displays aspects of the subset of the travel options resulting from selecting the respective cell in the tabular region.

10. A method for displaying travel options comprises:

compartmentalizing travel options into bins according to a set of criteria of the travel options; and

displaying a summary of the travel options in a graphical user interface according to the bins.

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[1] *See generally* Spec. 1:18-2:12.

The Examiner relies on the following prior art references to show unpatentability:

Ran	US 6,209,026 B1	Mar. 27, 2001 (filed Mar. 7, 1997)
DeMarcken	US 6,307,572 B1	Oct. 23, 2001 (filed Jul. 2, 1998)

1. Claims 1-6, 8, and 10-49 stand rejected under 35 U.S.C. § 102(e) as being anticipated by DeMarcken.

2. Claims 7 and 9 stand rejected under 35 U.S.C. § 103(a) as unpatentable over DeMarcken and Ran.

Rather than repeat the arguments of Appellant or the Examiner, we refer to the Briefs and the Answer for their respective details. In this decision, we have considered only those arguments actually made by Appellant. Arguments which Appellant could have made but did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

OPINION

The Anticipation Rejection

Claims 1-6, 8, 20-26, and 32-49

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984);

W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554 (Fed. Cir. 1983).

The Examiner has indicated how the claimed invention is deemed to be fully met by the disclosure of DeMarcken (Ans. 3-9). Regarding independent claim 32, Appellant argues that the bar graph user interface shown in Figures 22-26 does not teach or suggest a tabular region comprising cells arranged in plural columns and rows. Appellant also argues that the reference fails to teach that the cells display criteria of a set of travel options that correspond to respective criterion or criteria of the selected cell. According to Appellant, DeMarcken does not teach that the cells display a summary of a criterion[2] of a set of travel options, but merely that they pictorially represent flight segments of pricing solutions and stopovers between flights (App. Br. 10-14; Reply Br. 2-4).

The Examiner contends that DeMarcken in Figure 22 discloses a tabular region and arranges multiple "cells" (e.g., 376a, 377a-d, etc.) in

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[2] We note in passing that Appellant's arguments pertaining to the alleged failure of DeMarcken to disclose the cells displaying *a summary of a criterion* of a set of travel options are not commensurate with representative claim 32, but rather with independent claim 1. Independent claim 1 recites, in pertinent part, graphical user interface comprising "a tabular region having a plurality of cells...with the cells displaying *a summary of a criterion* of a set of travel options...." (emphasis added). In contrast, representative claim 32 calls for, in pertinent part, instructions that cause a computer to "display a tabular region having a plurality of cells arranged...in plural columns and plural rows with the cells displaying *criteria* of a set of travel options...." (emphasis added).

In short, representative claim 32 does not require the cells display "a *summary* of a criterion" of a set of travel options, but rather only "criteria" of a set of travel options.

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plural columns and rows – cells which display criteria of a set of travel options including, among other things, flight segments. According to the Examiner, these "cells" are controls that, when selected, provide a "subset" of the travel options that are displayed in a second region as claimed (i.e., the window 380 shown in Figure 23) (Ans. 17-19).

Appellant responds that item 376a is not a cell, but merely a bar representation of a single travel option. As such, Appellant contends, item 376a does not display a summary of a criterion of a set of travel options, nor does item 376a correspond to a subset of travel options (Reply Br. 4-5).

We will not sustain the Examiner's rejection of independent claim 32. We find the functionality of DeMarcken's travel planning system, particularly the window 370 shown in Figure 22 and the associated window 380 shown in Figure 23, simply does not disclose the recited limitations.

We do not find that DeMarcken's bar graph display region reasonably constitutes a "tabular region" giving the term its broadest reasonable interpretation. The Examiner contends that the graphical region displaying the bar graphs in DeMarcken fully meets a "tabular region" since "tabular" is defined as "having a flat surface" (Ans. 18). Appellant, however, provides a competing definition of the term "tabular" as "of or arranged in a table or tabulated scheme...computed from or calculated by such a table or tables," and maintains that DeMarcken fails to disclose a "tabular region" (Reply Br. 3).

We find Appellant's definition of "tabular" more reasonably aligns with the disclosure; we therefore adopt Appellant's construction of the term. *See Phillips v. AWH Corp.,* 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc) ("The construction that stays true to the claim language and most naturally

aligns with the patent's description of the invention will be, in the end, the correct construction.") (citations omitted); *see also Free Motion Fitness, Inc. v. Cybex Int'l, Inc.*, 423 F.3d 1343, 1348 (internal citations omitted) (noting that reliance on dictionaries must accord with the intrinsic evidence: the claims, Specification, and the prosecution history).

With this construction of "tabular," we agree with Appellant that the graphical region displaying the bar graphs in DeMarcken is not a "tabular region." As shown in Figure 22, twenty-one possible itineraries are shown as separate bars with each bar ordered by increasing total fare (i.e., from $1433 to $1499). Each entry 376a of the bar graph corresponds to a set of flight segments on airlines that provide travel from the origin to the destination (DeMarcken col. 58, ll. 37-57).

When the user double-clicks a particular itinerary in Figure 22 (e.g., 376a), a window 380 appears that displays details regarding that particular itinerary including detailed information for each individual flight (airlines, aircraft type, etc.) and the fares 384 (DeMarcken, col. 58, l. 58 – col. 59, l. 8; Fig. 23). For example, window 380 in Figure 23 details the corresponding fares of the individual legs of the itinerary. As shown in the figure, the total fare of $1433 consists of three individual fares: (1) $469; (2) $858; and (3) $106.

Essentially, the graph of Figure 22 is structured such that each itinerary is plotted with respect to time. That is, the itineraries are graphed with respect to discrete time intervals that extend horizontally across the graph (i.e., the area between the dashed vertical lines in the graph). Depending on the duration of a particular flight leg in an itinerary, the individual legs can span multiple time intervals. The horizontal position of

each itinerary corresponds to that itinerary's total fare. A representative segment of this bar graph display of DeMarcken is shown in the enlarged detail view of Figure 22 below:
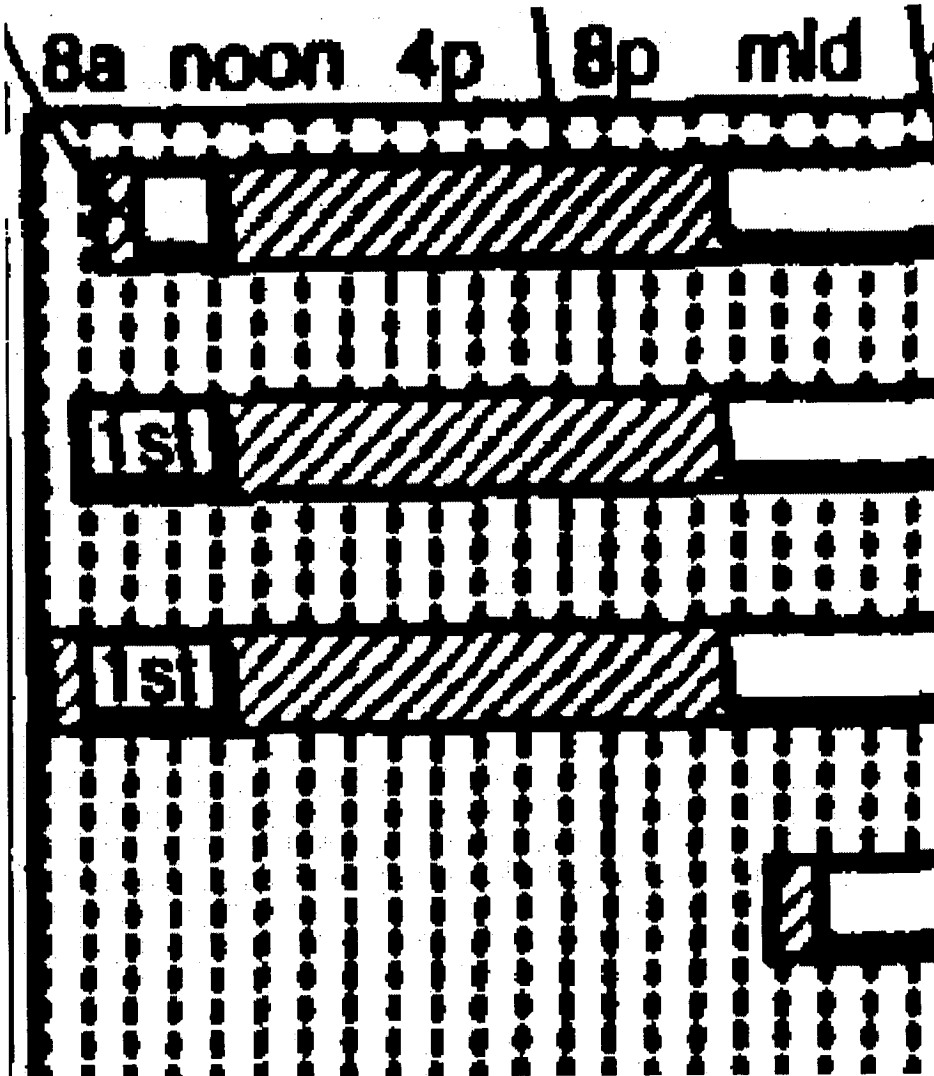
Figure 1: Enlarged Detail View of Figure 22 of DeMarcken

Even if we assume, without deciding, that these discrete vertical segments between the dashed lines could somehow constitute "columns,"

the respective itineraries are not displayed in "rows" in a tabular sense. Each itinerary is simply graphed with respect to time, sorted with respect to price, and displayed accordingly. There are no tabular rows in this graphical display.

Since there are no tabular rows in DeMarcken's display, it follows that the reference likewise fails to disclose "cells" of a table (i.e., areas that represent the intersections of rows and columns). To somehow construe the display of "cells" from the individual bar graphs in DeMarcken would require us to resort to speculation and strain the reference's teachings beyond reasonable limits.

DeMarcken's Figure 22 merely displays twenty-one different "travel options" with respect to price and duration. Each itinerary is, in effect, one travel "option" (i.e., a "subset") of the set of twenty-one such options. However, the individual fares and flights for each itinerary shown in window 380 of Figure 23 do not constitute subsets of "travel options" corresponding to the respective criterion of the selected cell as claimed.

For the foregoing reasons, we conclude that DeMarcken fails to anticipate independent claim 32 as well as independent claims 1, 20, 40, and 45 which recite commensurate limitations.[3] Accordingly, we will not sustain the Examiner's rejection of independent claims 1, 20, 32, 40, and 45 as well as dependent claims 2-6, 8, 21-26, 33-39, 41-44, and 46-49.

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[3] Our discussion also applies to independent claims 40 and 45 that call for, in pertinent part, generating and displaying a table.

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Claims 10-19 and 27-31

Regarding independent claim 10, Appellant argues that DeMarcken fails to disclose compartmentalizing travel options into bins according to a set of criteria of the travel options as claimed. Appellant emphasizes that the Examiner's reliance on the items 376a and 377a-d as teaching this feature is misplaced since these items are merely graphical representations of flight segments and layovers, but are not the result of any compartmentalizing function (App. Br. 18-20; Reply Br. 6-7).

We will sustain the Examiner's rejection of independent claim 10. At the outset, we note that Appellant has not specifically defined the terms "compartmentalize" and "bins" in the specification; accordingly, we construe the terms with their ordinary and customary meaning. *See Brookhill-Wilk 1, LLC. v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed. Cir. 2003) ("In the absence of an express intent to impart a novel meaning to the claim terms, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art."). *See also Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc). Furthermore, to determine the ordinary meaning of commonly understood words, it is entirely appropriate to cite a dictionary definition. *Agfa Corp. v. Creo Products, Inc.*, 451 F.3d 1366, 1376 (Fed. Cir. 2006) (noting that general purpose dictionaries may be helpful when claim construction involves "little more than the application of widely accepted meaning of commonly understood words").

The term "compartmentalize" is defined, in pertinent part, as "[t]o separate into distinct parts, categories, or compartments."[4] Also, the term "bin" is defined, in pertinent part, as "a container or enclosed space for storage."[5]

In our view, the scope and breadth of the claim language simply does not preclude the functionality of DeMarcken. Figure 24, for example, shows the various travel options for a round-trip journey between Boston and San Diego. The top half of the graphical region displays eight travel options for the first half of the journey (i.e., origin to destination). Similarly, the bottom half of the graphical region displays eight travel options for the second half of the journey (i.e., destination to origin) (DeMarcken, col. 59, ll. 9-26; Fig. 24).

Segregating the various travel options into these two distinct groups in DeMarcken fully meets "compartmentalizing travel options into bins according to a set of criteria of the travel options" as claimed. Simply put, each half of the round-trip journey corresponds to a "bin" -- a "bin" into which travel options are "compartmentalized" according to criteria of the travel options (i.e., at least location and time) and displayed accordingly.

Therefore, DeMarcken fully meets independent claim 10 as well as dependent claim 14. For similar reasons, DeMarcken also anticipates independent claim 27 and dependent claim 31. Accordingly, we will sustain the Examiner's anticipation rejection of those claims.

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[4] The American Heritage Dictionary of the English Language, Fourth Edition, *available at* http://www.bartleby.com/61/44/C0524400.html (last visited Nov. 15, 2007).
[5] *Id.*, *available at* http://www.bartleby.com/61/51/B0255100.html (last visited Nov. 15, 2007).

However, for the reasons previously discussed,[6] we will not sustain the Examiner's rejection of dependent claims 11-13, 15[7]-19, and 28-30 which call for, among other things, a table.

The Obviousness Rejection

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

If the Examiner's burden is met, the burden then shifts to the Appellant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

Regarding the obviousness rejection of dependent claims 7 and 9, the Examiner adds the disclosure of Ran to DeMarcken (Ans. 9-10). But since Ran does not cure the deficiencies noted above with respect to independent claim 1, the obviousness rejection of claims 7 and 9 is also not sustained.

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[6] *See* pp. 5-8, *supra*, of this opinion.
[7] We note in passing that no antecedent basis exists for "*the* table" in claim 15. Although we presume that Appellant intended the limitation "the table" to be "a table," we leave resolution of this issue to the Examiner and the Appellant.

DECISION

We have not sustained the Examiner's rejections with respect to claims 1-9, 11-13, 15-26, 28-30, and 32-49. We have, however, sustained the Examiner's rejections with respect to claims 10, 14, 27, and 31. Therefore, the Examiner's decision rejecting claims 1-49 is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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